

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA  
SNOCO LLC; PATH AMERICA FARMER'S  
MARKET, LP; PATH AMERICA KINGCO  
LLC; PATH AMERICA TOWER, LP; PATH  
TOWER SEATTLE, LP; POTALA TOWER  
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and

POTALA SHORELINE, LLC and POTALA  
VILLAGE KIRKLAND, LLC,

Relief Defendants

No. 2:15-cv-01350-JLR

**PATH AMERICA TOWER  
INVESTORS' MOTION TO MODIFY  
TEMPORARY RESTRAINING ORDER  
OR PRELIMINARY INJUNCTION**

**Note for Hearing: October 16, 2015**

**Oral Argument Requested**

PATH AMERICA TOWER INVESTORS'  
MOTION TO MODIFY TRO / PI  
No. 2:15-cv-01350-JLR

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## I. INTRODUCTION AND RELIEF REQUESTED

As set forth in the Path America Tower Investors' Motion to Intervene, this case is about much more than the individual \$500,000 investments they have made or the alleged fraud that the SEC has sued to rectify. For these investors, this case presents a dire threat to their chance at becoming permanent legal residents of the United States through the United States Citizenship and Immigration Service's ("USCIS") EB-5 Immigrant Investor Program. This case threatens to tie up their investment funds – which remain in individual escrow accounts and have not even been released to a Path America entity – until the EB-5 law sunsets or is superseded by new legislation, thus forever preventing them from getting a fair chance to invest the substantial capital they have raised in a United States project; create the requisite full-time domestic jobs to meet the EB-5 program's requirements; and obtain a green card.

Accordingly, and as set forth in the Path America Tower Investors' Motion to Intervene, this group of investors hereby moves to modify the Court's Temporary Restraining Order or Preliminary Injunction, whichever is in effect at the time this motion is noted for hearing,<sup>1</sup> and for an order directing Defendants to release their funds from escrow. Such an order is the only way to protect these investors' rights and prevent them from suffering irreparable harm as a result of the injunctive relief afforded to the SEC in this matter.

## II. STATEMENT OF FACTS

In the interest of brevity, the Path America Tower Investors hereby incorporate the Statement of Facts set forth in their Motion to Intervene, filed concurrently herewith.

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<sup>1</sup> The Path America Tower Investors recognize that the Court has set the SEC's Motion for Preliminary Injunction for hearing on October 6, 2015, and will attend that hearing in the event the Court wishes to hear their position on that motion.

### III. ARGUMENT AND AUTHORITY

As the Court is well aware, the benefit of any asset freeze imposed in a securities fraud action brought by the SEC must also be weighed against the harm that it may impose on the investors the SEC seeks to protect. *SEC v. Manor Nursing Ctrs., Inc.*, 458 F2d 1082, 1106 (2d Cir. 1972). In addition to balancing the need to compensate injured investors against the possibility that their investments might be harmed by the destruction of the financial assets at issue in the litigation, *see SEC v. Lybrand*, 2000 WL 913894, at \*12 (S.D. N.Y. July 6, 2000), courts also consider generally whether an asset freeze “is in fact in the allegedly defrauded investors’ interests.” *SEC v. Coates*, 1994 WL 455558, at \*1 (S.D. N.Y. Aug. 23, 1994).

Here, as set forth in detail in the Path America Tower Investors’ Motion to Intervene, this group of investors is particularly at risk of suffering irreparable harm due to the Court’s injunctive relief because of the preliminary stage of their investments, which are tied up in the Path America escrow accounts and have not been released to the company.<sup>2</sup> This group of investors has not filed yet filed their I-526 petitions and is unlikely to be “grandfathered” in under the existing EB-5 law before it is superseded by new legislation or sunsets on December 11, 2015.<sup>3</sup> Counsel for the Path America Tower Investors has consulted with counsel for the SEC on this matter and expects them to join this motion; Defendants have inexplicably refused to so stipulate.<sup>4</sup> As the Court is well aware, the SEC and Defendants have previously stipulated to the return of five different but similarly-situated investors’ funds, which the Court granted. *See* Dkt. No. 21. The Path America Tower Investors ask nothing more than to be given the same fair treatment as this previous set of investors.

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<sup>2</sup> Declaration of Nelson K. H. Lee at ¶ 4-5.

<sup>3</sup> *Id.* at ¶ 7.

<sup>4</sup> *Id.* at ¶ 6.

1 Accordingly, so that the Path America Tower Investors may seek to reinvest their  
2 assets in a new EB-5 project as soon as possible, these investors respectfully request that the  
3 Court modify its injunctive relief and order Defendants to release these funds.

4 **IV. CONCLUSION**

5 For the reasons set forth above, the Path America Tower Investors respectfully request  
6 that the Court grant this motion and order the release of their funds held in escrow. A  
7 proposed order granting the relief requested is submitted herewith.

8 DATED this 1<sup>st</sup> day of October, 2015.

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**CERTIFICATE OF SERVICE**

I hereby certify on October 1, 2015, I caused the foregoing document to be electronically filed with the Clerk of the U.S. District Court for the Western District of Washington using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED this 1<sup>st</sup> day of October, at Seattle, Washington.

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